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2 Plaintiffs are casino dealers at the Wynn Las Vegas ("Wynn") who allege that Wynn violated
3 the Fair Labor Standards Act ("FLSA") by requiring dealers to participate in a tip pool with other
4 employees who allegedly do not customarily receive tips. Their claim rests in substantial part on a
5 2011 regulation issued by the Department of Labor. This Court dismissed the Plaintiffs' complaint on
6 the ground that the FLSA did not restrict the use of tip pools by employers (like Wynn) who do not
7 take a tip credit against their minimum wage obligations. *Cesarz v. Wynn Las Vegas, LLC*, No. 13-
8 109, 2014 WL 117579, at *3 (D. Nev. Jan. 10, 2014). In a consolidated appeal, the Ninth Circuit
9 reversed, relying at least in substantial part on the 2011 regulation. *Or. Rest. & Lodging Ass'n v. Perez*,
10 816 F.3d 1080 (9th Cir. 2016). While Wynn's petition for a writ of certiorari was pending with the
11 Supreme Court, the FLSA was amended to reflect certain restrictions on tip pools and address remedies
12 for employees subject to unlawful tip pooling arrangements. *See* 2018 Appropriations Act, Div. S,
13 § 1201. The amendment further stated that "[t]he portions of the [2011 Department of Labor] final
14 rule" that are at issue in this case "shall have no further force or effect until any further action by the
15 Administrator of the [Department's] Wage and Hour Division." *Id.* at § 1201(c). Shortly after
16 enactment of that legislation, Wynn's petition for a writ of certiorari was denied. *See* U.S. Sup. Ct.,
17 Case No. 16-163 (Jun. 25, 2018). The mandate of the court of appeals issued that same day.

18 In light of the statutory amendment and other intervening events, Defendants intend to move
19 for dismissal of the Plaintiffs' complaint. Although Plaintiffs do not consent to dismissal of the
20 complaint, the Parties have discussed a proposed briefing schedule that takes into account their exiting
21 professional and personal obligations (one of the lead attorneys for Plaintiffs is expecting a child in
22 August). Pursuant to Local Rule ("LR") IA 6-2 and LR 7-1, Plaintiffs JOSEPH CESARZ, QUY NGOC
23 TANG, individually and on behalf of all others persons who have filed consents to join and all others
24 similarly situated ("Plaintiffs"), by and through their counsel of record, and Defendants WYNN LAS
25 VEGAS, LLC, and STEVE WYNN (collectively "Defendants"), by and through their counsel of
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1 record, hereby request and stipulate to the following briefing schedule with respect to Defendants'
2 anticipated motion to dismiss Plaintiffs' Complaint:

- 3 1) Motion to Dismiss: July 31, 2018
- 4 2) Opposition to Motion to Dismiss: October 1, 2018
- 5 3) Reply to Opposition: November 1, 2018

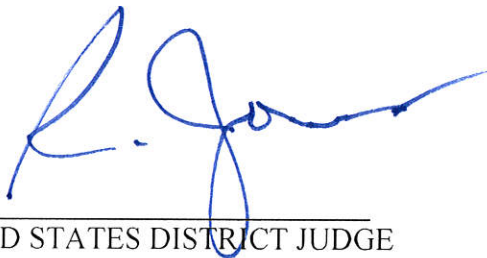
6 The Parties further stipulate that discovery obligations be stayed during the pendency of
7 Defendants' Motion.

8 The parties respectfully propose that the Status Conference set for July 9, 2018, be vacated in
9 light of Defendants' anticipated motion to dismiss Plaintiffs' complaint and the parties' agreement with
10 respect the briefing schedule on Defendants' Motion.

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15 **[PROPOSED] ORDER**

16 Having reviewed the Parties' stipulation, the briefing schedule on Defendants' anticipated
17 motion to dismiss is hereby approved. Discovery shall be stayed during the pendency of Defendants'
18 motion. The status conference set for July 9, 2018 is hereby vacated.

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20 IT IS SO ORDERED:

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22 _____
23 UNITED STATES DISTRICT JUDGE

24 DATED: 7/9/18
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1 DATED: July 6, 2018

2 Respectfully submitted,

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*Pro Hac Vice Application Pending

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/s/ Amanda C. Machin